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UNCLAS SECTION 01 OF 02 TAIPEI 000458

SIPDIS

STATE FOR EAP/RSP/TC AND EB/TPP/MTA/IPC, STATE PASS AIT/W
AND USTR, USTR FOR KI AND FREEMAN

E.O. 12958: N/A

TAGS: [ECON](#) [KIPR](#) [ETRD](#) [TW](#) [IPR](#)

SUBJECT: TAIWAN'S PROPOSED IPR COURT CONSIDERS EXCLUDING
CRIMINAL CASES

1. Summary: The Judicial Yuan committee charged with establishing an intellectual property court met January 20 to discuss whether to include all types of cases: administrative, civil and criminal, or to exclude criminal cases. Taiwan Intellectual Property Office (TIPO) representatives made a strong case, supported by the Ministry of Justice (MOJ), that criminal cases should be included in the Court,s mandate and that civil and criminal cases stemming from the same violations should be brought separately but before the same panel of judges. Some judges object to trying all cases in the same court because evidenciary rules are different for civil and criminal cases. Since the overwhelming majority of all IPR related cases are criminal, an IPR Court that does not include criminal cases would be of limited utility. End summary.

2. In the fifth meeting of the Judicial Yuan committee convened to consider the establishment of an intellectual property court, participants discussed how and whether to include all types of IP related cases: administrative, civil and criminal, or to exclude criminal cases. Under Taiwan law, different IP related cases have recourse to different legal protections. Trademark cases can be decided in administrative, civil, or criminal proceedings. Patent cases can avail of administrative or civil litigation, but cannot be brought before the criminal courts. Copyright cases can only be considered in the civil or criminal systems.

3. Representatives from TIPO and the MOJ made a strong argument in the meeting that including criminal cases in the IPR Court,s mandate made sense. Pursuing a civil action against an IPR violator is a time consuming and expensive process that requires the complainant post a sizeable bond. Taiwan,s record of enforcement of civil judgments is weak. As a result, most intellectual property holders turn to Taiwan,s criminal justice system in search of deterrent sentences that will discourage future piracy, even in less egregious cases of a few illegal copies.

4. TIPO argued that to provide the strongest possible protection for intellectual property rights, the IPR Court must consider all types of cases and that the judicial panels should be reorganized along subject rather than case lines. For example, one judicial panel might hear patent and copyright related cases, no matter if they are civil, administrative or criminal. Another might focus just on trademark violation cases of all kinds. In this fashion, judges could gain expertise in subject fields that could be applied across the range of cases. Civil, administrative and criminal cases could be brought in parallel before the same panel of judges, saving time and creating consistent case law.

5. Since the proposed IPR Court is to be a court of second instance (similar to a Court of Appeals), TIPO is also proposing assigning some of the bigger district courts to handle IPR cases. Currently, Taiwan has 23 district courts. TIPO would propose assigning five of the biggest: Taipei, Hsinchu, Taichung, Kaohsiung, and Hualien, to handle the majority of IPR related cases. That would allow TIPO to assign experts in patents, trademarks, and copyrights to each of these courts on a full-time basis to advise the judiciary on the technical aspects of IP cases.

6. Some in the Judicial Yuan oppose the inclusion of criminal cases in the mandate of the IPR Court. These judges note that since the separation of criminal and civil cases in 1999, judges have specialized in one type of case or the other. Evidenciary rules for administrative and civil cases are virtually identical, therefore it would be relatively easy to consider both types of case in one court. However, criminal evidence rules are much more strict than those for other types of cases. Some believe that combining all three types of cases in one court will lead to conflict.

7. The Executive branch, represented by TIPO, is scheduled to submit a position paper to the JY on this debate on February 18. Once that paper has been submitted, the panel will again convene to discuss this issue, with a decision expected soon thereafter.

8. Comment: The establishment of the IPR Court is not expected until late 2006 at the earliest. But it is

important that the JY committee considering the duties and authority of the court make the right decisions now, to avoid having to reverse course in the future. With the vast majority of all IPR related cases in Taiwan currently being decided in the criminal system, it is essential that criminal cases be included in the mandate of the IPR Court. Doing so will not only ensure that IPR related criminal cases will benefit from the expertise of IPR Court judges, but could also lead to reforms that could build credibility for underutilized civil proceedings and reduce the burden on judges and prosecutors. AIT will work through the AmCham IPR Committee to contribute industry views to the Judicial Yuan committee encouraging the inclusion of criminal cases in the IPR Court,s mandate. End Comment.
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